THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

DATED:01-09-2006.

WRIT PETITION NOS. 1242 OF 2005, 603 OF 2005 AND 23176 AND 24462 OF 2004

W.P.NO.1242 OF 2005

M.V.S.Girija Kumar D/o Maddali
Adinarayana, aged about 50 yrs,
Sarpanch, Venkatagiri Gram Panchayat
Nellore District and 4 others

.Petitioner

vs

1.The Government of Andhra Pradesh
represented by its Principal Secretary to Government
Panchayat Raj and Rural Development (PTS.IV)
Department, Secretariat
Buildings, Hyderabad and 3 others

.Respondents

W.P.NO. 603 OF 2005

Nukala Seshaiah, son of Viswanadham,
Hindu, aged 44 yrs, Ward Member of 11th ward
Venkatagiri Grampanchayat, r/o Door
No.17-59, Mulasali street, Venkatagiri,
Nellore District

.Petitioner

vs

1.The State of Andhra Pradesh
represented by its Principal Secretary to Government
Panchayat Raj and Rural Development (PTS.IV)
Department, Secretariat
Buildings, Hyderabad and 39 others

.Respondents

W.P.NO.23176 OF 2004

Nukala Seshaiah, son of Viswanadham,
Hindu, aged 44 yrs, Ward Member of 11th ward
Venkatagiri Grampanchayat, r/o Door
No.17-59, Mulasali street, Venkatagiri,
Nellore District

.Petitioner

vs

1.The State of Andhra Pradesh
represented by its Principal Secretary to Government

Panchayat Raj and Rural Development (PTS.IV)
Department, Secretariat
Buildings, Hyderabad and 3 others

.Respondents

W.P.NO.24462 OF 2004

Nukala Seshaiah, son of Viswanadham,
Hindu, aged 44 yrs, Ward Member of 11th ward
Venkatagiri Grampanchayat, r/o Door
No.17-59, Mulasali street, Venkatagiri,
Nellore District

.Petitioner

vs

1.The State of Andhra Pradesh
represented by its Principal Secretary to Government
Panchayat Raj and Rural Development (PTS.IV)
Department, Secretariat
Buildings, Hyderabad and 15 others

.Respondents

COMMON ORDER(Per the Hon'ble Sri K.C.Bhanu,J)

Writ Petition No.1242 of 2005 is filed by the Sarpanch and some of the ward members of Venkatagiri Gram Panchayat, Nellore District challenging the validity of G.O. Ms.No.13 Municipal Administration and Urban Development (Ele.II) Department, dated 06-01-2005 by which the area covered under 1) a) Venkatagiri, b) Dharmavaram, 2) a) Ammavaripet, b) Kummarigunta, c) Boppapuram; 3) Bangarupet, 4) Manulalpet, 5) Periyavaram and
6) Chavireddypalli gram panchayats have been declared as smaller urban area with immediate effect and that the Venkatagiri Municipality is deemed to have been constituted under sub section (i) of Section 3 of the A.P. Municipalities Act, 1965 and G.O.Ms.No.3 Panchayat Raj and Rural Development Department, dated 06-01-2005 de-notifying the six gram panchayats.

W.P.No.603 of 2005 is filed to quash the impugned proceedings of the 1st respondent vide G.O.Ms.No.13, dated 06-01-2005 as highly illegal, arbitrary and in violation of Principles of natural justice.

W.P.No.23176 of 2004 is filed by the Sarpanch of Venkatagiri Grampanchayat to declare the action of the respondents in initiating steps for conversion of Venkatagiri

Grampanchayat into Municipality in violation of Article 243-E of the Constitution 73rd Amendment Act, 1992 on the ground that the elected members of the panchayat who assumed the office is in force till August, 2006 and therefore, the said action is completely in violation of Section 243-E of the Constitution Amendment Act, 1992.

W.P.No.24462 of 2004 is filed to quash the impugned proceedings of the 1st respondent in Roc.No.847/2001-A2, dated 15-12-2004 as highly illegal and arbitrary.

It is stated in the writ petitions that the term of office of the petitioners would expire by August, 2006 and that without following the criteria for constituting a Smaller Urban Area and having not been fulfilled, the impugned notification has been issued. All the villages are not situated as a cluster of villages. Ammavaripeta is one kilometer away from Venkatagiri, Bangarupeta is 5 kilometers away, Manulalpeta is 4 kilometers away, Periyavaram is 4 kilometers and Chevireddypalli is 2 kilometers away from Venkatagiri, Kummarigunta is 1 kilometer away and Bopapuram is 2 kilometers away from Venkatagiri. By the de-notifications and declaration of smaller urban area, the elected term of six gram panchayats has been abruptly cut short. It is further stated that dissolution of gram panchayats must be by the dissolution of the elected body, but not by abolition of gram panchayat institution itself. Therefore, petitioners seek a mandamus directing the respondents to forbear from enforcing G.O.Ms.No.13 as illegal, arbitrary.

The 1st respondent filed counter affidavit admitting term of office of the petitioners as five years, but keeping in view of larger interest and aspirations of Urban villages, Venkatagiri was constituted as third grade municipality. The proximity and very urban features of Periyavaram deserve to be included in the proposed Venkatagiri Municipality and that Chevireddypalli is contiguous to Venkatagiri. In respect of Manulalpet, it forms part and parcel of Venkatagiri and Mandal Parishad, Venkatagiri in their meeting held on 24-10-2004 has resolved unanimously to upgrade Venkatagiri into Municpality by clubbing the gram panchayat. The procedure prescribed under Rule 3 of G.O.Ms.No.13 Municipal Administration and Urban Development (Elec.II) Department and Article 243-E of Constitution of India has no application to the present facts of the case. Therefore, the Government passed the impugned order and there are no grounds in the writ petitions.

In the counter affidavit filed by the 2nd respondent, it is stated that Venkatagiri and other panchayats are attracted urbanization with reference to the criteria prescribed by the Government in Rule 3 of A.P. Municipalities (Fixation of criteria for transitional area and smaller urban area) Rules, 1994. There is no violation of any rule position in

connection with constitution of municipality.

Mr.M.Jagannatha Sarma, learned counsel for the petitioner in W.P.1242 of 2005 contended that there is fragrant violation of Rule 3 of the Andhra Pradesh Transitional Area and Smaller Urban Areas (Fixation of Criteria) Rules, 1995 and that the elected tenure of the petitioners would expire in August, 2006, that under Article 243-E proviso, dissolution of panchayat at any level shall not be done till the expiration of duration and that the impugned action of clubbing of six Gram panchayats and creating municipality is arbitrary, discretionary and violation of Article 14 of the Constitution of India.

Ms.Nanda, learned counsel for the petitioners in W.P.No.23176 of 2004 contended that the Government cannot upgrade Venkatagiri Gram Panchayat into municipality before completion of period of 5 years in violation of Article 243-E of the Constitution of India. She also further contended that Rule 12 of Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 has not been followed and therefore, she prays to quash the impugned proceedings.

It is contended by the learned counsel for the petitioners in other writ petitions that the provisions of Panchayat Raj Act has not been followed for conversion of Venkatagiri Gram Panchayat into municipality and that there is no provision in A.P. Panchayat Raj Act, 1994 for conducting requisition meeting. In the requisition meeting, the Sarpanch of the village has not been present and in the absence of Sarpanch and 9 ward members, the resolution was passed and agreed for upgradation of Venkatagiri municipality, which is illegal.

On the other hand, learned Government Pleader for Panchayat Raj and Municipal Administration contended that since Rule 12 of the Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 is rescinded by the Governor and the same was Gazetted on 08-05-2002, question of following the Rule 12 of the said rules does not arise and that in the first instance Clause 42-a of Section 2 of the A.P. Municipalities Act, 1965 has been followed declaring the area covered against erstwhile Venkatagiri Grama Panchayat as a smaller urban units and thereafter Venkatagiri municipality was constituted as a third grade municipality. He also further contended that the Government after following the criteria laid down under the Act, issued the impugned G.O. and when a third grade municipality is constituted lawfully the elected members would cease to function and therefore, there are no grounds to interfere with the impugned orders.

The Government issued G.O.Ms.No.3 Panchayat Raj and Rule Development Department (PTS.IV), dated
06-01-2005 constituting six gram panahcyats as a smaller urban area to constitute a municipality. The said notification reads as follows:

"In exercise of the powers conferred under clause (f) of sub-section (2) of Section 3 of Andhra Pradesh Panchayat Raj Act, 1994 the Government hereby cancels the notifications in which the following gram panchayat of Nellore District were declared as villages and as Gram Panchayats with immediate effect so as to declare the areas under the said Gram Panchayat as Smaller Urban Area to constitute a municipality.

S.No.	Name of the Gram Panchayats
1.	Venkatagiri Gram Panchayat
2.	Ammavaripet Gram Panchayat
3.	Bangarupet Gram Panchayat
4.	Manulalpet Gram Pancyayat
5.	Periyavaram Gram Panchayat
6.	Chevireddipalli Gram Panchayat

The source of power of the Government can be traceable to Section 3 (2)(f) of the Panchayat Raj Act, 1994. Section 3 (1) reads that the Government (as amended by Act No. 22 of 2002 w.e.f. 20-06-2002) may by notification and in accordance with the rules made in this behalf declare any revenue village or hamlet thereof or any part of a mandal to be a village for the purpose of this Act and specify the name of the village. From the above provision, it makes clear that the Government by notification can declare an area to be a village. Under clause (f) of sub Section 2 of Section 3 of the Act, the Government also power to cancel a notification issued under Sub Section (1). Exercising the powers under clause (f) of sub section 2 of Section 3 of A.P. Panchayat Raj Act, 1994, the Government issued notification by canceling the notification of constituting six gram panchayats with immediate effect so as to declare under the area of Gram panchayat as Smaller Urban area to constitute a municipality.

The Division Bench of this Court in a decision reported in **D.SURYANARAYANA AND OTHERS V GOVERNMENT OF A.P. MUNICIPAL ADMINISTRATION DEPARTMENT AND OTHERS** [1], held as follows:

"What all required by the Statute is compliance of the provision under Clause (42-a) of Section 2 by specifying the area as 'transitional area'. In our view specifying 'transitional area' under Clause (42-a) is the first and a necessary pre-requisite for constitution of a Nagar Panchayat under Section 2-A"

In view of the above decision, it is clear that a public notification has to be issued in the first instance by the Government declaring Smaller Transitional area or Smaller urban area. In this case, a notification was issued declaring six gram panchayats as smaller urban area so as to constitute a municipality. Therefore, constituting six gram panchayats as smaller urban areas is completely in accordance with law. Thereafter, G.O.Ms.No.13 Panchayat Raj and Rule Development Department (PTS.IV), dated 06-01-2005 was issued. In the first notification, all the six gram panchayats were

declared as Smaller Urban Area and by second notification, Venkatagiri Gram panchayat was upgraded as third grade municipality. The said notification was issued in exercise of powers under clause (42-a) of Section 2 of A.P. Municipalities Act, 1965 read with Rule 3 of the Andhra Pradesh Transitional Area and Smaller Urban Areas (Fixation of Criteria) Rules, 1995.

The learned counsel for the petitioners contended that the criteria as prescribed under Rule 3 of the Andhra Pradesh Transitional Area and Smaller Urban Areas (Fixation of Criteria) Rules, 1995 has not been followed. The criteria of constitution of Municipality as per Rule 3 of A.P. Municipalities (Inclusion or exclusion of areas into/from the limits of Municipalities/Nagarpanchayats) Rules, 2006, reads as follows:

> "a) The areas which are proposed to be included into the limits of Municipality/Nagar Panchayat shall be within a radius of 3 K.M of a Municipality/Nagar Panchayat.
>
> b) The proposed area shall represent ample number of population to its area (s)
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> c) The proposed area shall represent economic importance of any specific reason viz., tourist place, historical place etc.,
>
> d) Proper justification shall be made for inclusion of an area(s)
>
> e) In no case where an area is away from a distance of 3 K.Ms from the Municipality/Nagar Panchayat and no representation of ample population is made then such proposal shall not be taken into consideration for inclusion."

From the above rules, it is clear that Nagar Panchayat shall be within a radius of 3 K.M from the Municipality and there should be ample number of population and there must be proper justification.

Basing on the above criteria, the learned counsel for the petitioners contended that Bangarupeta is 5 kilometers away, Manulalpet is 4 kilometers away, Periyavaram is 4 kilometers and other villages are within a radius of less than 2 K.Ms away from Venkatagiri. In the counter affidavit filed by the 1st respondent, it is stated that Bangarupeta is 5 K.Ms from Venkatagiri and it is situated on Gudur-Vengatagiri road. Considering the proximity of Bangarupeta to Venkatagiri and its urban features, it is quite suitable for upgrading municipality. In respect of Manulalpet, it is a part and parcel of Venkatagiri Gram panchayat till 1998. Since the Government and as the village abuts Venkatagiri, it has been included as it is a contiguous to Venkatagiri. In respect of Periyavaram, it is situated 4 K.Ms away from Venkatagiri. In view of urban features of proximity, this was also included in the proposed Venkatagiri Municipality. Even though, Bangarupeta, Manulalpet and Periyavaram are more than 3 K.Ms from Venkatagiri according to the petitioners, but there was representation of amble population is made

out. But according to the 1st respondent, almost all the offices and institutions in Periyavaram are very close to Venkatagiri and taking into consideration once Manulalpet is part and parcel of Venkatagiri Gram Panchayat, the Government has taken a decision. Except the distance in respect of three villages, the other criteria as prescribed under Rule 3 of Rules 2006 has been followed. But these rules came into effect w.e.f.

21-02-2006. Therefore, the said rules have no application. The impugned G.Os are issued on 06-01-2005. Rule 3 of the Andhra Pradesh Transitional Area and Smaller Urban Areas (Fixation of Criteria) Rules, 1995 reads as follows:

(a) Population	: Above 40,000 Provided that a local area with A lesser population may also be Considered if it has acquired urban characterists.
(b) Density of Population	: Provided that a local area with a lesser density of population may also be considered if it has aquired urban characterists.
(c) Revenue	: Rs.60.00 lakhs and more per annum Provided that a local area with a lesser income may also be considered if it has acquired urban characteristics.
(d) Percentage of Employ-ment in Non-agricultural activities	: 60% and above
(e) Economic importance	: Availability of market facilities and potentialities to attract industries.
(f) Other Factors	: Local area acquiring urban characteristics.

The learned counsel for the 2nd respondent contended that the criteria has been followed in view of the allegations in the counter affidavit which reads as follows:

"It is submitted that the following are the particulars of Venkatagiri and 5 panchayats as per the information received from the Collector, Nellore.

Population in density

1.Venkatagiri	25838	4501
2.Ammavaripet	5473	1555

3.Chevidpally	4352	971
4.Periyavaram	7498	1376
5.Bangarupet	3748	1793
6.Manulalpet	1430	1212
Total	48339	19.01

Revenue

1.Venkatagiri	Rs.3356565/-
2.Ammavaripet	Rs. 858288/-
3.Chevidpally	Rs. 792328/-
4.Periyavaram	Rs. 595184/-
5.Bangarupet	Rs. 240909/-
6.Manulalpet	Rs. 81232/-
7.Total	Rs.5924506/-

Percentage of employment in Non-agricultural activities

1. Venkatagiri	62%
2.Ammavaripet	52%
3.Chevidpally	58%
4. Periyavaram	36%
5.Bangaarupet	73%
6.Mannulalopet	71%
Average	62%

Economic importance :Citrus production, Weaving production, Dying Brick, Industries, Poultry and Diary are available.

Other factors : Bus Dept, Handloom technology college, 5 Junior Colleges including private) 2 Degree colleges, Railway Station, Shopping Complex, C.C. roads, Sid drains, 9th Betallian, ITI, Judicial Court, 11 Welfare Hostels, 3 Government Hospitals, Veterinary Hospital, 5 Commercial Banks,Good net work of transport and communication.

The contention of the learned counsel for the petitioners is that Rule 3 of Rules, 2006 have been violated cannot be accepted in view of the fact that they came into existence after issuance of impugned G.Os.

He further contended that Article 243 –E of Constitution of India has been

violated which reads as follows:

> "Every panchayat unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Under clause 2, no amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1)"

No doubt the above Article mandates that unless a panchayat is dissolved under any law for the time being in force, it shall be continued for five years. The learned counsel for the petitioners contended that the word dissolution is to be read as a dissolution of elected body of the Gram panchayat, but not abolition of the Gram Panchayat institution itself. The power to de-notify any village as Gram Panchayat under Section 3 of A. P. P. R. Act, 1994 is also within the competence of the Government. So also any Gram Panchayat to constitute a Municipality under Section 389-A of A.P. Municipalities Act, 1965 is also vests with the Government. It is not a case of abolition of Gram Panchayat or dissolution of Gram Panchayat, but it is upgrading the panchayat into municipality in exercise of lawful powers. It is not a case of amendment to any law for the time being in force so as to effect causing of dissolution of panchayat. Under Article 243-Q of the Constitution of India, there shall be constituted in every State, (a) a Nagar Panchayat for a transitional area, that is to say, an area in transition from a rural area to an urban area (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area in accordance with the provisions of this Part. So the Governor has power having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification. The Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Constitution.

Therefore, Article 243-E of the Constitution of India has to be read along with Article 243-Q. If both the Articles are read harmoniously, a panchayat was ceased to be in existence when the same was merged or upgrading with municipality. But the upgradation or merging the panchayat so as to form Smaller Urban Areas are constituted lawfully. The elected members of the panchayat ceased to function. We are fortified by the decision reported in **STATE OF MAHARASHTRA AND ANOTHER V DEEP NARAYAN CHAVAN** [2], wherein it was held that:

> "The movement the corporation was constituted lawfully the elected Municipal Counsel, held, would cease to function and the counselors though elected, held would have to vacate the office."

Therefore, the contentions raised by the learned counsel for the petitioners cannot be accepted since the act of the respondents is completely in accordance with law and there is no arbitrariness involved, question of quashing the impugned proceedings does not arise.

Further as seen from the record, a direction was given by this Court in W.P.No.21019 of 2004 directing the District Collector to consider whether the resolution No.48, dated

05-11-2004 passed by Venkatagiri GramPanchayat is in accordance with law or not. The District Collector passed an order which has been challenged in W.P.No.24462 of 2004 as illegal and arbitrary. For the contentions raised in these writ petitions, Rule 12 of Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 requires before issuance of a notification under Clause (f) of Sub Section 2 of Section 3 of the Act, the Gram Panchayat which will be affected by issue of such notification shall be given an opportunity of showing cause against proposal to indicate its decision. By virtue of G.O.Ms.No.163 Panchayat Raj and Rural Development (PTS.IV), dated 08-05-2002 which is gazetted in the Extraordinary Gazette of A.P., dated 29-05-2002, the Governor of A.P. rescinds Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 issued G.O.Ms.No.515 Panchayat Raj Rural Development and Relief (Mandal-I) Department, dated 17-08-1994 and subsequent amendments thereon. So by the date of resolution, there is no need to give an opportunity to the panchayat. Therefore, whether the requisition meeting dated 01-11-2004 and consequence resolution passed by the members present therein, or whether the resolution No.48, dated 05-11-2004 is in accordance with rules or not are the questions of academic in nature. It is needless to observe that the academic questions need not be answered. It is immaterial for a Gram Panchayat to pass any resolution accepting its decision to upgrade the panchayat into municipality or rejecting its decision to upgrade a panachayat into municipality. If the criteria prescribed under Rule 3 of 1995 is followed for upgrading the municipality, it would be a sufficient legal compliance.

In view of the aforesaid reasons, we are of the opinion that the impugned G.O. does not violate constitutional provisions, but in accordance with law. We are also of the opinion that there is no need to give any finding with regard to requisition meeting by the Venkatagiri Gram Panchayat or its resolution or the order passed by the District

Collector in pursuance of the order of the learned single Judge of this Court since Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 are not in existence.

Therefore, all the writ petitions are devoid of merit and accordingly, they are dismissed. No costs.

BILAL NAZKI, J

K.C.BHANU, J

DATED:01-09-2006
Hsd

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[1] 2000 (2) ALT 787 (D.B.)
[2] 2002 (10) S.C.C. 565